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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,197	11/26/2001	Thomas Reisinger	GR 99 P 1915	8423
24131 7590 02/20/2007 LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480			EXAMINER KIM, KEVIN	
			ART UNIT 2611	PAPER NUMBER
			MAIL DATE 02/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/994,197	<b>Applicant(s)</b> REISINGER ET AL.	
	<b>Examiner</b> Kevin Y. Kim	<b>Art Unit</b> 2611	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached Detailed Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed February 6, 2007 have been fully considered but they are not persuasive.

Applicant traverses the rejection of claims by asserting that the extent of frequency deviation taught in the Abel patent is about 8,000 ppm, "much greater" than 300 ppm recited in the claims. The Abel patent was provided to establish a benefit of RF receivers that are designed to have tolerance as to reception bandwidth, i.e., the accommodation of transmission bandwidth. The exact range of allowed frequency deviation is a matter of design choice since there is a trade off between the complexity of the receiver and the fine deviation range desired as well as observed frequency deviation. Further, it should be noted that the specification fails to show the criticality of the recited 300 ppm.

Applicant also contends that there is no motivation to combine the references by alleging that "a detuning value of the magnitude required in the Lemense patent would exceed the capabilities of a conventional oscillator crystal." However, applicant failed to provide any evidence supporting this statement. The Bourzeix patent clearly teaches that the reference frequency of crystal oscillator can be controlled by using a different capacitance value so that the PLL, in response to the controlled reference frequency, would generate different frequencies. Note that in the Bourzeix patent, the crystal oscillator generating 13 MHz is used to generate an IF frequency of about 200 Mhz. Similarly, the Lemense teaches two reference oscillators (94) each producing 5.35 MHz, which is ultimately used to produce the transmission frequencies of 342.4 MHz and 385.2. Thus, the two references teach comparable frequency ranges. By

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connecting an appropriate value of capacitance, the generation of a frequency 21.4 MHz above or below 363.8 Mhz seems certainly within the capability of a conventional crystal oscillator in combination with a capacitor.

Applicant is in the position that because the tunable range of the Bourzeix patent is 2,700 ppm its oscillator could not have been used in the Lemense patent which requires 58,000 ppm. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). One skilled in the art would have used different capacitor values coupled to a crystal oscillator to produce desired 342.4 MHz and 385.2 MHz.

Applicant further contends that there is no the motivation to combine the references. However, the motivations were already addressed in the previous Office actions. To reiterate, the crystal oscillator coupled to a plurality of capacitors, to produce different frequencies, as taught by Bourzeix patent provides a benefit of using only one reference oscillator as opposed to the two separate oscillators of the Lemense patent. Of course, when the teachings of the two references are combined, an appropriate adjustment would have been made in order to meet the original objective of the primary reference, the Lemense patent in this case, of generating two distinct frequencies.

The motivation to incorporate a teaching of the Abel also has been addressed in the previous Office action. The Able reference teaches the desirability of adding tolerance to the

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reception frequency band in order to accommodate the transmission frequency. Since the transmission frequencies of 342.4 MHz and 385.2 MHz as used in the Lemmense patent would experience transmission deviation, it would have provide a benefit to build a receiver that is tuned to a frequency bandwidth including slight frequency deviations from the expected transmission frequencies of 342.4 MHz and 385.2 MHz.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Y. Kim whose telephone number is 571-272-3039. The examiner can normally be reached on 8AM --5PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 15, 2007

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KEVIN KIM  
PRIMARY PATENT EXAMINER

